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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/617,065

07/13/2000

Norman Understein

2802-5 (AMK)

7218

23117

7590

08/20/2008

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EXAMINER

GREENE, DANIEL LAWSON

ART UNIT

PAPER NUMBER

3694

MAIL DATE

DELIVERY MODE

08/20/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Art Unit: 3694

1. The reply brief filed 06/04/2008 has been entered and considered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.

2. It appears applicant fails to appreciate the teachings of Walker and the applicability of said teachings to "funding accounts". It appears applicant is reading limitations from the specification into the claim language but although the claims are interpreted in light of the specification, limitations from the specification are NOT imported into the claims. The Examiner must and has given the claim language the broadest reasonable interpretation the claims allow.

See MPEP 2111.01:

While the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims **must be interpreted as broadly as their terms reasonably allow**. In re American Academy of Science Tech Center, F.3d, 2004 WL 1067528 (Fed. Cir. May 13, 2004)

3. A credit card is indeed a "funding account" just as savings/checking or other accounts having "funds" therein or funds available for use (credit) as explained in the Examiners answer.

4. **The 6/30/2008 Declaration WILL NOT be entered and WILL NOT be considered** by the Board for at least two reasons:

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- a. as it is merely an opinionated declaration with no evidence in support thereof AND
- b. said declaration does NOT overcome all the rejections under appeal per MPEP § 41.33 (d)(1).

5. It is not seen where any factual evidence is presented within the declaration. It is noted that Mr. Baumann's statements alone without presentation of factual evidence can only be construed as an opinion. No patentable weight can be given to an opinionated declaration. Consequently, said declaration cannot be relied upon as an adequate response to the issues presented in the Examiners Answer mailed 4/4/2008.

6. Please note that no weight is given to an opinion declaration on the ultimate Legal conclusion in issue. See *In re Lindell*, 155 USPQ 251. See also *In re Pike et al*, 84 USPQ 235.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL L. GREENE whose telephone number is (571)272-6876. The examiner can normally be reached on Mon-Thur.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. L. G./
Examiner, Art Unit 3694
2008-08-13